

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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SPECIAL CIVIL APPLICATION No 5479 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 Yes
2 to 5 No

PATEL BUPATABHAI MULJIBHAI

Versus

DY COLLECTOR

Appearance:

MS KUSUM M SHAH for Petitioner
Mrs. Siddhi D. Talati, learned A.G.P.
for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/02/98

ORAL JUDGEMENT

1. This petition relates to agricultural lands bearing S.Nos.46 and 47/5 in all admeasuring 7 Acres 12 Gunthas situated at village Vadhana of Taluka Palanpur district Banaskantha. The said pieces of land (hereinafter referred to as 'the Land') were held by one Koli Rupabhai Badrabhai - respondent No.4 herein as Pasayata Land. Under S.4 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 the alienation of the Land stood abolished and all rights subsisting on the Land stood extinguished. The Land, thereafter, was re-granted to the respondent No.4 as new

tenure Land. The Land being new tenure Land was impartible and inalienable. An entry to that effect was made in the revenue records on 26.5.1977. In spite of the Land being impartible and inalienable, the respondent No.4 on 1st August, 1979 sold the Land to the petitioner herein under a registered sale deed. A mutation entry to that effect was made in the revenue record on 4.3.81 being entry No.372. The said entry No.372 was not approved and an endorsement to that effect has been made in the revenue record on 25.3.82. In view of the aforesaid breach of the terms of grant proceeding was initiated against the petitioner and the respondent No.4 by the Deputy Collector by issuing a notice dated 27.8.84, calling upon them to show cause why the Land should not be forfeited to the Government. The petitioner appeared before the Deputy Collector and submitted that he being illiterate person was not aware that the Land was impartible and inalienable and that the transfer of the Land in his favour be regularised. Under order dated 24.9.84 the Deputy Collector rejected the petitioner's prayer to regularise his possession of the Land and made an order to forfeit the Land. Feeling aggrieved, the petitioner preferred an Appeal before the Collector, Banaskantha being A.Land Appeal No.120 of 1985, which was dismissed on 26.9.85. A Revision Application being No.S.R.D.Land 554/85 preferred before the Government was also rejected by the Special Secretary (Appeals) under his judgment and order dated 7.5.86. Feeling aggrieved, the petitioner has preferred the present petition under Article 226 of the Constitution.

2. Ms. Shah, the learned advocate, appearing for the petitioner has submitted that the impugned order made by the Deputy Collector and confirmed by the Collector and the Government is illegal and invalid. She has submitted that the proceeding against the petitioner for breach of term of grant has been initiated in the year 1984 i.e. more than 5 years after the date of the sale and the said proceeding is required to be quashed and set aside on the mere ground of undue delay. She has further submitted that the petitioner has spent as much as Rs.14,000/- for improvement of the Land and to make it cultivable and fertile. She has also submitted that the petitioner did not deny that there was a breach of the term of grant, however, petitioner's request for regularisation of his possession ought to have been accepted by the respondents authorities. She has submitted that under the Government Resolution dated 11.6.68 and the Addendum issued on 5.8.68 the Government has issued instructions in respect of regularisation of transfer of Land made in breach of terms of the grant,

irrespective of whether such transfer has been effected before the re-grant or thereafter. She has submitted that the authorities below instead of relying upon the above referred Resolution of 11.6.68 and Addendum dated 5.8.68, which were prevalent at the time of the sale, have relied upon another Government Resolution dated 13.7.83, which came into force long after the sale of the Land. She has submitted that the Resolution dated 13.7.83 would become operative from the date of the issuance i.e. 13.7.83 and the same could not have been applied in case of transfer, which was made as far back as in the month of August 1979. She has relied upon the said Resolution dated 13.7.83 and has submitted that even under the said Resolution dated 13.7.83, the Government has made a provision for regularisation of the transfer of the Land as new tenure Land. What is prohibited under the said Resolution is conversion of the new tenure Land to that of old tenure Land. She has submitted that the petitioner has never made a demand to convert the Land into an old tenure Land and the petitioner's application for regularisation, therefore, could not have been rejected. In support of these contentions she has relied upon three unreported judgments; i.e. in the matters of Suthar Maganbhai Ganeshbhai and another v. State of Gujarat and another being Special Civil Application No.5143 of 1964 decided on 26.7.96 (Coram : A.N.Divecha,J); of Patel Jivabhai Mulabhai v. Deputy Collector and others being Special Civil Application No.1074 of 1986 (Coram: R.A.Mehta,J) and in the matter of Mohamad Kavi Mohamad Amin v. Fatimabai Ibrahim being Civil Appeal No.5023 of 1985 decided by the Supreme Court of India on 22.8.96.

3. In the matter of Suthar Maganbhai Ganeshbhai (Supra), a similar issue regarding regularisation of transfer made in breach of grant was for consideration before this Court. The Court observed that transfer in question was effected some time before the year 1980. Thereafter the transferee applied for regularisation of his possession which was rejected under order dated 28.6.80 and the order was confirmed in Appeal by the Collector. However, in revision preferred before the Government under order dated 29.8.83 the said Revision was accepted and the matter was remanded to the lower authority with a direction to regularise the transfer of the Land in question in accordance with the Government Resolution dated 11.6.68. After such a remand, relying upon the Government Resolution dated 13.7.83, the application for regularisation was rejected. In the petition preferred before this Court, the Court held that for regularisation of the transfer of the Land effected

before 13.7.83, the lower authorities could not have relied upon the Government Resolution dated 13.7.83 since the said Resolution became effective only from the date of the issuance i.e. 13.7.83. In my view, the above judgment does not lend support to the present case. In the said matter, an application for regularisation was made before the year 1980 and the said application was required to be considered in accordance with the Government instructions prevailing at that time. Even under the order dated 29.8.83 Government had directed the lower authorities to consider the regularisation of the transfer in the light of the Government Resolution dated 11.6.68 and 5.8.68. The lower authorities, therefore, were duty bound to comply with the said direction and could not have relied upon subsequent Government Resolution dated 13.7.83. In the present case, no application for the regularisation of possession of the petitioner was made prior to 13.7.83. In fact, there has been no application for regularisation of the transfer of the Land to the petitioner. However, since the notice was issued in the month of August 1984, the petitioner in course of hearing, prayed the transfer of the land in his favour be regularised. Thus on the date when the lower authority was required to consider the regularisation of the transfer made in favour of the petitioner it was 13.7.83 Resolution which was in force and the Resolution dated 11.6.68 and Addendum dated 5.8.68 were cancelled long before that date. In my opinion, the Deputy Collector while considering the petitioner's prayer for regularisation in the month of August 1984 could not have relied upon the Government Resolutions, which were not in existence. The question of regularisation is required to be considered in the light of the position prevalent on the date of such application. In the matter of Patel Jivabhai Mulabhai (Supra) the prayer for regularisation of transfer was rejected on the ground that the Government had no power to regularise transfer made in breach of the grant. The Court held that under S.73-B of the Bombay Land Revenue Code, the State Government did have the power to regularise such transfer. In the matter of Mohamad Kavi Mohamad Amin (Supra) the Supreme Court has held that where there is no limitation prescribed, the power must be exercised within reasonable time.

4. As noted hereinabove, though the transfer of the Land was made on 1.8.79 a mutation entry to that effect was made on 4.3.81. The said entry, however, under endorsement dated 25.3.82 was not approved by the Mamlatdar. On perusal of the original records, I find that since then the matter was under consideration and

even prior to the issuance of notice dated 25.8.84, the petitioner was summoned and a statement made by the petitioner on 21.8.84 is found on the record. Thus it is apparent that the lower authorities were aware of the transfer of the Land made in breach of the terms of the grant and the proceeding was initiated soon after mutation entry was made in the revenue records. In my view, therefore, the proceedings cannot be said to have been initiated after undue delay as is averred by Ms. Shah. Further except the bare statement of the petitioner, there is no evidence produced by him in support of his claim that he had spent a sum of Rs.17,000/- or any other amount for improvement of the Land as alleged. On the contrary, on perusal of the records, it does appear that even prior to the sale, the Land was cultivable and the respondent No.4 was taking several crops from the said Land. It, therefore, cannot be believed that the petitioner had spent any amount for improvement of the Land. The Government Resolution dated 13.7.83 is placed on the record by Ms. Shah. I am afraid, I can not accept the contention of Ms. Shah that under clause (2) thereof, the transfer could have been regularised without converting the Land into the old tenure Land. The said Resolution provides that no new tenure Land should be converted into an old tenure Land; the new tenure Land can be permitted to be transferred only on payment of premium to the extent referred to therein. Thus, what is referred to in Clause (2) is the grant of permission on payment of premium and the same does not refer to regularisation of a transfer made in breach of the terms of the grant. I am, therefore of the view that since the matter, in respect of the transfer of the Land, was taken up and since the petitioner had made a prayer for regularisation of the transfer of Land in his favour in the year 1984, authorities below could not have relied upon the Government Resolution of 1968, which had been cancelled in the year 1982. The claim for regularisation could have been examined only in the light of the then prevalent Government instructions. The petitioner's application for regularisation of transfer in his favour is, therefore, rightly rejected.

5. It however appears that the petitioner is in possession of the Land since the year 1979 i.e for nearly 19 years and he has been cultivating the said Land for all these 19 years. The petitioner, therefore, may make an application to the Competent Authority for grant of the Land. Ms. Shah has submitted that if the Land were granted to the petitioner, he would be ready and willing to pay the premium, which may be determined by the Competent Authority in accordance with law. The

petitioner, therefore, if desirous, shall make an application for grant of the Land to the Competent Authority on or before 31.3.98. If such an application is made, the same shall be decided in accordance with law on or before 30.6.98. The ad interim order made on the present petition on 14.10.86 shall continue to operate till 30.6.98 on condition that the petitioner gives an undertaking to this Court before 27.2.98 to the effect that the petitioner is in exclusive possession of the Land and that he shall neither transfer nor alienate the Land in any manner in favour of any other person till 30.6.98.

6. Subject to the above directions, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

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